

1 **BEFORE SHORELINES HEARINGS BOARD**  
2 **STATE OF WASHINGTON**

3 **WHATCOM COUNTY WATER**  
4 **DISTRICT #10,**

5 **Appellant,**

6 **and ,**

7 **SUDDEN VALLEY COMMUNITY**  
8 **ASSOCIATION,**

9 **Intervenor-Appellant.**

10 **v.**

11 **WHATCOM COUNTY,**

12 **Respondent,**

13 **and**

14 **WHATCOM FALLS NEIGHBORHOOD**  
15 **ASSOCIATION, SHERILYN WELLS,**  
16 **and JAY TABOR,**

17 **Intervenor-Respondents.**

SHB NO. 92-41

**MODIFIED**  
**FINAL FINDINGS OF FACT,**  
**CONCLUSIONS OF LAW**  
**AND ORDER**

18 The Shorelines Hearings Board ("Board") heard this matter on July 26-28, 1993, in  
19 Lacey, Washington. Robert V Jensen, attorney member, presided. The other Board  
20 members in attendance were: Richard C Kelley, Bobbi Krebs-McMullen, David Wolfenbarger  
21 and Bob Patrick.

22 Appellant, Whatcom County Water District #10 ("WCWD"), was represented by  
23 attorney Harry L. Johnsen; intervenor-appellant, Sudden Valley Community Association  
24 ("SVCA"), was represented by attorney Philip E Sharpe, Jr.; respondent, Whatcom County  
25 ("County"), was represented by Deputy Prosecuting Attorney, Randall J Watts; and

26 **MODIFIED FINAL FINDINGS OF FACT**  
27 **CONCLUSIONS OF LAW AND ORDER**  
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1 intervenor-respondents, Whatcom Falls Neighborhood Association ("WFNA"), Sherilyn Wells  
2 and Jay Tabor, were represented by attorney Michael W. Gendler.

3 Louise M. Becker and Kim L. Otis, court reporters, affiliated with Gene S. Barker and  
4 Associates of Olympia, recorded the proceedings

5 The Board heard testimony of sworn witnesses, all oral argument of the parties; and  
6 reviewed all the exhibits and briefs that the parties submitted. Based thereon, the Board makes  
7 these:

## 8 FINDINGS OF FACT

### 9 I

10 On February 21, 1992, the State of Washington, Department of Health ("Health")  
11 declared that the contamination of the ground resulting from the "ongoing and periodic  
12 discharge of untreated sewage from Water District 10's sewer system manholes" create a  
13 severe public health hazard. Health's declaration was in response to a request from the County  
14 Health Officer. The declaration cited the fact that major overflows, lasting from hours to  
15 weeks have occurred four to five times each year, for the past twenty years.

### 16 II

17 WCWD's service area includes almost all of Lake Whatcom, which is a shoreline of  
18 state-wide significance, under the Shoreline Management Act ("SMA"). The lake provides  
19 water for approximately 60,000 people in the City of Bellingham and environs.

### 20 III

21 This body of water is in danger of contamination due to periodic overflows of sanitary  
22 sewers of WCWD. These overflows are due to excessive infiltration and inflow ("I and I")  
23 into WCWD's sewer lines. The collection system primarily consists of nearly 50 miles of  
24 vitrified clay pipe, lined with concrete; and nearly 1100 manholes, installed over 20 years ago.

1 This system, which lies within the Sudden Valley residential community, was not constructed  
2 in accordance with current standards.  
3

#### 4 IV

5 WCWD constructed the south shore sewer interceptor line in about 1970. It was built  
6 with a projected capacity to accommodate growth for approximately 20 years. The existing  
7 line consists of 8-14-inch mains. Most of this line runs parallel and adjacent to the shore of  
8 Lake Whatcom.

#### 9 V

10 The current interceptor system, begins at the Sudden Valley Pump Station, which is  
11 located near, but to the north of Austin Creek, which becomes a shoreline of the state after it  
12 is joined by Beaver Creek, within Sudden Valley. Austin Creek flows through Sudden Valley,  
13 into Lake Whatcom. The interceptor is a pressure line from the pump station, to the high  
14 point on the system at Whatcom Views. There are two pump stations, prior to this point,  
15 which pump directly into the interceptor from Sudden Valley. They are: North Point and the  
16 airport pump stations. From Whatcom Views, the interceptor transmits sewage by gravity  
17 flow, with manholes open to the atmosphere, until the line reaches the Cable Street pump  
18 station. From there, the sewage is pumped to Bellingham's Silver Beach trunk sewer.  
19 Between the Cable Street pump station and the trunk line, there is one small pump station that  
20 pumps directly into the interceptor the Euclid station.

#### 21 VI

22 Since the installation of this line, Whatcom County has developed a master program for  
23 its shorelines, under the SMA. The Whatcom County Shoreline Master Program ("WCSMP")  
24 has been approved as a state regulation, by the Department of Ecology ("Ecology"), in August  
25 1976. The WCSMP contains the following policy:

1 Sewage trunk lines, interceptors, pump stations, and treatment plants are not shoreline  
2 dependent and should be located away from shorelines unless alternatives are  
infeasible.

3 WCSMP 6.19(2)(B)(1)

## 4 VII

5 Sudden Valley was commenced as a recreational development in the late 1960's.  
6 WCWD was directed to take over the development's sanitary sewer system, which it did. The  
7 subdivision comprises approximately 4,333 lots on 1,800 acres, on uplands abutting Lake  
8 Whatcom on the south shore. Some of the land in the development consists of very steep  
9 slopes. The development has a storm water collection system which directs roof and driveway  
10 drainage into dry wells constructed on the individual lots. Road runoff is diverted to open  
11 ditches along the roadways, and ultimately flows into the small streams located in the  
12 development. About 35 to 45 percent of the residents are retirees. There is however, a trend  
13 of new owners who reside in the development and commute to work. The rate of occupancies  
14 in the development, has increased substantially since 1990. Due to this increase, and the  
15 WCWD's limited sewer capacity, WCWD imposed a moratorium on connections to its existing  
16 system in September 1992. There are currently 1,643 residential sewer connections in Sudden  
17 Valley. Sudden Valley has, since 1985, had a density reduction program, which allows  
18 owners of two adjacent lots to erase the lot lines and achieve a reduction of the annual dues by  
19 one half. To date, this program has resulted in the reduction of 158 lots within the  
20 development. There are approximately 2,800 lots left to be developed in Sudden Valley. The  
21 Long Range Planning Committee of SVCA, has recommended reducing the number of  
22 remaining developable lots to 1,400. This recommendation has not yet been acted upon by the  
23 Board of Directors of SVCA

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## VIII

WCWD applied to the County for a shoreline substantial development permit, on February 11, 1992, to construct a sanitary sewer force main from the City of Bellingham ("Bellingham") trunk sewer to Sudden Valley. The stated purpose of the project was "to eliminate sewage overflows to Lake Whatcom during storm events". The project was designed to parallel the existing interceptor line. The applicable construction cost was, at that time, estimated to be: \$825,000.

## IX

The essential components of the proposed project are: 1) increasing the pumping capacity at the Sudden Valley pumping station, by increasing the size of the pumps, and replacement of the existing auxiliary generator with a larger unit; 2) construction of a 10-inch line parallel to the existing interceptor, beginning about 2,000 feet northwest of the Sudden Valley pump station; 3) increasing the line to 12-inches beginning at Whatcom Views; 4) reducing the size of the line back to 10-inches, at Strawberry Hill, which is the second highest point in the line, and gradually increasing the size of the line from 10 to 18-inches at the Cable Street pump station; 5) exchanging equipment at the Cable Street pump station, including increasing the size of the existing auxiliary generator; 6) reducing the size of the new line to 12-inches from Cable Street to the Silver Beach trunk line; 7) increasing the capacity of the airport, Lake Louise and Cable Street pump stations; and 8) moving the Sudden Valley generator to the Flatcar Ridge pump station. The current estimated cost of the new system is between \$1,750,000 and \$2,000,000.

## X

Bellingham and WCWD entered into an agreement on January 1, 1974, allowing WCWD to send its domestic sewage to Bellingham. The agreement limits the amount of flow

1 Bellingham will receive, to 3,200 gallons per minute, approximately 2,500 of which is  
2 allocated to the south shore of Lake Whatcom. The agreement further requires WCWD "to  
3 prohibit all storm, surface, or ground water, including but not limited to, roof drains,  
4 downspouts and footing drains, from entering its sanitary sewer system". Elimination of such  
5 waters from the sanitary system, increases the capacity of the system to transport sanitary  
6 sewage.  
7

## 8 XI

9 The County denied the substantial development permit, on the ground that under the  
10 WCSMP, the sewer interceptor should not be built until the alternative of reducing the storm  
11 and ground water in the sanitary sewer is completed. WCWD did not submit, nor did the  
12 County consider other alternatives.

## 13 XII

14 WCWD filed a timely appeal with the Board on September 3, 1992. Ecology and the  
15 Attorney certified the appeal on October 2, 1992. WFNA, Sherilyn Wells, Jay Tabor and  
16 SVCA joined the appeal as intervenors.

## 17 XIII

18 The Board, on July 21, 1993, ruled on a summary judgment, that the WCSMP requires  
19 a look at all reasonable alternatives to the proposal, including measures to reduce the amount  
20 of sanitary sewage that is projected to be sent through the new interceptor. WCWD offered  
21 evidence on several alternatives at the hearing. These were: 1) reduction of I and I in the  
22 present collector system; 2) an alternate route on the Lake Louise Road; 3) a big basin  
23 detention concept; 4) a sewage treatment effluent pumping ("STEP") system; and 5) doing  
24 nothing.  
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1  
2 **XIV**

3 The new interceptor is designed to accommodate 80 percent of the projected build out  
4 on the south shore, under current zoning. The 80 percent limitation is based on Bellingham's  
5 restriction on WCWD's sewage flow into the system.

6 **XV**

7 The Lake Whatcom Subarea Plan, dated July 15, 1982, contains the following  
8 statement regarding residential growth around Lake Whatcom: "further residential  
9 development within the Lake Whatcom watershed must be limited to a quantity and density  
10 which is consistent with the overall maintenance of a safe and adequate public water supply".

11 **XVI**

12 Infiltration is seepage into sewer lines. It can result from high ground water entering  
13 into sewer lines where the joints are faulty. The ground water can also enter into manholes  
14 where there are cracks. Infiltration can also result from rainwater entering these cracks.  
15 Inflow is a rush of water from a specific source, such as occurs when rainfall gathers around a  
16 manhole top which is lower than the street. Standard design criteria allow 20 gallons per day,  
17 per person of I and I. The Sudden Valley development currently experiences about 43 gallons  
18 per person, per day. The engineers for the project estimated that 85 percent of the I and I  
19 problem is related to leaking manholes. Following this determination, WCWD, in 1991, did  
20 phase 1 of a rehabilitation project on the Sudden Valley collection system, consisting of work  
21 on 200 manholes. Since then there have been only two overflows in the system: one caused by  
22 mechanical failure, the other by rain falling on snow. It is too early to tell whether this  
23 reduction is the result of the first phase of manhole rehabilitation. WCWD is currently  
24 working on phase 2 of the manhole project, to eliminate leaks in 770 manholes. The cost of  
25 this phase is estimated at \$500,000. It is anticipated that the work on this phase will be

1 completed in October 1993. It may take from several months to several years of monitoring to  
2 determine accurately, in the light of weather patterns, the degree to which I and I has been  
3 reduced by this work. WCWD hopes to reduce I and I by 46 percent, as a result of the  
4 manhole rehabilitation project. The existing system is at capacity, assuming a reduction of I  
5 and I to the current standard of 20 gallons per day, per person. The proposed system,  
6 assuming this reduction of I and I, could accommodate approximately 2,000 new residential  
7 connections. The total of present connections on the south shore to the WCWD sewer system,  
8 is 2,498. In addition, WCWD has about 100 outstanding commitments for future connections  
9 along the south shore. Therefore, the proposed system could accommodate about 4,600 total  
10 residential hookups.

## 11 XVII

12 The Lake Louise route would tie into the existing interceptor at the Sudden Valley  
13 pump station. It would then proceed away from Lake Whatcom for an approximate distance  
14 of 1,800 feet. There it would turn westerly along the Lake Louise Road, which travels  
15 through the most southerly uplands of Sudden Valley for approximately 4,250 feet. The Lake  
16 Louise Road then continues along the southerly edge of Sudden Valley, passes below a  
17 campground belonging to Sudden Valley, and proceeds to Cable Street, where it turns westerly  
18 as Cable Street turns into Lakeway Drive. It then heads northeasterly, along Electric Avenue,  
19 at about four and one-half miles west of the point where it began to follow the southerly edge  
20 of Sudden Valley. The route would pass by, but be outside the shorelines of Lake Louise, a  
21 22 acre shoreline lake, within Sudden Valley. It would cross Austin Creek twice. It would  
22 parallel Beaver Creek, a small, non-shoreline creek that flows through Sudden Valley and into  
23 Austin Creek, for a distance of about 8,000 feet.



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## XVIII

The essential components of operating the Lake Louis route would be: 1) upgrading the airport and Sudden Valley pump stations, so that the sewage could be pumped approximately four and one-half miles to the high point on Lake Louise Road; and 2) adding three new pump stations. The estimated cost of this system would be \$3,700,000.

## XIX

This route would be between approximately 2,000 and 7,000 feet from Lake Whatcom, until it enters the vicinity of the Cable Street pump station, where it would be approximately 600 to 700 feet from the lake.

## XX

The big basin concept would entail the placement of two basins: one at the site of the Sudden Valley pump station; the other at the Cable Street pump station. The former would be 70 by 70 feet, by 8 feet deep; the latter, 57 by 57 by 8 feet deep. The Cable Street basin would be in the general vicinity of Bellingham's water intake in Lake Whatcom. The basins would be built above ground to protect against leaks. This alternative would also require an approximately 10-inch line parallel to the existing line, between Strawberry Point and Cable Street. A new pump station would be required at Sudden Valley, to pump the sewage out of the basin into the system. A new pump station would also be required at Cable Street, to replace the displaced pump station that presently exists. In order to accommodate the basin at Cable Street, it would also be necessary to condemn some residences. The basins would require periodic cleaning of solids. The estimated cost of this alternative is \$2,700,000.

## XXI

The STEP system consists of a thousand gallon holding tank, on the property of single family residential owners. The solids settle out on the bottom, the grease and scum on the top,

1 and in the middle is relatively clear water. Inside a fine screen is a vault, consisting of  
2 polyvinylchloride ("PVC") pipe, with holes in it to allow the passage of the liquid effluent.  
3 The screen prevents whatever solids are in this area, from mixing into the effluent. A small  
4 water pump is inside the screen. The pump also has a small screen over its intake. The  
5 discharge from this pump goes into a small one-inch diameter line, which in turn goes into a 4-  
6 inch line in the street. This latter line is a low-pressure sewer system. The system can, in the  
7 alternative, utilize a grinder pump, which macerates the solids, before sending them into the  
8 collection system. The system is connected electronically, so that the valleys, in the flow of  
9 sewage, may be filled, and the peaks reduced. The concept is for 24 hour per day, essentially  
10 even flow, near capacity of the system. The cost of the collection system is estimated at  
11 \$3,500,000. In addition, each house would have a cost of about \$3,000. For the 2,600  
12 existing connections the total cost would be \$7,800,000. 2,000 additional connections, as are  
13 contemplated in the proposal, would cost an additional \$6,000,000.

## 14 XXII

15 The do-nothing proposal was presumed to limit new houses to septic tanks. No cost  
16 was estimated for this proposal.

## 17 XXIII

18 Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.  
19 From these Findings of Fact, the Board issues these:

## 20 CONCLUSIONS OF LAW

### 21 I

22 The Board has jurisdiction to review the denial of this permit by the County. RCW  
23 90.58.180. The Deputy Prosecuting Attorney, in his closing brief, changed his position and  
24 agreed with that of WCWD and SVCA. After the briefing period was closed, the Whatcom  
25

1 County Council submitted a letter to the Board stating its position, which agreed with the  
2 Deputy Prosecutor, but added conditions to the County's approval. The Board has not  
3 considered the County Council's statement, because it was not filed timely. Even if the Board  
4 were to consider the statement, it would not remove the Board's jurisdiction to decide the  
5 merits of this case. Once the appeal was filed and certified, the County lost jurisdiction over  
6 the permit decision. Moreover, the private intervenor-respondents have not relinquished their  
7 objections to the permit.  
8

## 9 II

10 The SMA is to be liberally construed on behalf of its purposes. RCW 90.58.900;  
11 Clam Shacks v. Skagit County, 109 Wn.2d 91, 93, 97, 743 P.2d 265 (1987).

## 12 III

13 WCWD and SVCA bear the burden of proving that the proposal is consistent with the  
14 SMA and the WCSMP. RCW 90.58.140(2)(b) and (7).

## 15 IV

16 Lake Whatcom is designated as a shoreline of state-wide significance under the SMA.  
17 RCW 90.58.030(2)(e)(iv); WAC 173-20-770(1).

## 18 V

19 The SMA declares that certain uses are preferred on shorelines of state wide  
20 significance, in the following order of preference:

- 21 (1) Recognize and protect the state-wide interest over local interest;
- 22 (2) Preserve the natural character of the shoreline;
- 23 (3) Result in long term over short term benefit;
- 24 (4) Protect the resources and ecology of the shoreline;
- 25 (5) Increase public access to publicly owned areas of the shorelines;
- 26 (6) Increase recreational opportunities for the public in the shoreline;
- 27 (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

1 RCW 90.58.020.

2  
3 VI

4 The WCSMP reflects this command, by declaring that: "uses which are not generally  
5 consistent with these policies [for shorelines of state-wide significance] should not be permitted  
6 on such shorelines". WCSMP, 4.1. The WCSMP is also consistent with these policies in  
7 directing that:

8 The range of options for shoreline use should be preserved to the maximum possible  
9 extent for succeeding generations. Development which consumes valuable, scarce or  
irreplaceable natural resources should not be permitted if alternative sites are available.

10 WCSMP, 4.3(3)(b).

11 VII

12 The County further implemented these policies by adopting the following provision  
13 governing the location of sewage systems:

14 Sewage trunk lines, interceptors, pump stations, and treatment plants are not shoreline  
15 dependent and should be located away from shorelines unless alternatives are  
infeasible.

16 WCSMP, 6.19(2)(B)(1).

17 VIII

18 We conclude that it is significant that this policy was adopted subsequent to the  
19 placement of the WCWD sewer interceptor along the shores of Lake Whatcom. Those who  
20 chose to locate that interceptor could not have consciously applied such a policy, because it did  
21 not exist. Indeed, the policy is a clear expression of a change in policy by the County and  
22 Ecology, designed to move such facilities out of the shorelines.

23 IX

24 Our consideration of the application of the alternative location policy of the WCSMP is  
25 guided by the distinction drawn in Defense Fund v Metro Seattle, 59 Wn App. 613, 800

1 P.2d 387 (1990), between technical and economic feasibility. The Seattle Master Program,  
2 which was applied in that case, contained language that prohibited sewage treatment plants in  
3 shorelines, "unless no feasible alternative to that location exists". *Id.* at 59 Wn. App. 617.  
4 The program goes on, however, to explain that feasibility is to be based upon "full  
5 consideration of the environmental, social and *economic* impacts on the community".  
6 *Id.* (emphasis added). The court contrasted that language with the following language from the  
7 Department of Transportation Act of 1966, which was applied in the case of Citizens to  
8 Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 28 L. Ed. 2d 136, 91 S. Ct. 814 (1971)  
9 "the Secretary [of Transportation] shall not approve any program or project which requires the  
10 use of any publicly owned land from a public park . . . unless (1) there is no feasible and  
11 prudent alternative to the use of such land . . . "

#### 12 X

13 The court cogently explained the limitations on determining feasibility, where no  
14 reference is made therein to cost factors.

15 We conclude, therefore, that where, as in this case, the language of a statute or  
16 ordinance provides an agency with specific factors it must consider in determining  
17 feasibility, the agency has a duty consider those factors in making its determination as  
18 to the feasibility of alternatives to the proposal. *Conversely, where no such language*  
19 *appears, as in Overton Park, a governmental entity such as the City of Seattle has less*  
*flexibility and any technically feasible alternative, regardless of its costs and other*  
*impacts, must generally be considered a 'feasible alternative' to the proposed plan.*

20 Defense Fund at 620-21 (emphasis added).

#### 21 XI

22 The feasible alternative provision of the WCSMP is comparable to the one of Douglas  
23 County, in which this Board reversed a local decision that a proposed highway location was  
24 appropriate. Washington Environmental Council v. Douglas County, SHB NOS. 86-34, 86-36  
25 & 86-39 (1988). The Douglas County Master Program language in issue provided:

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27 MODIFIED FINAL FINDINGS OF FACT  
CONCLUSIONS OF LAW AND ORDER  
SHB NO. 92-41 13

1 "Whenever feasible and desirable, roads and railroads should be located away from  
2 shorelands, except for frontage roads and roads serving ports and recreational facilities". The  
3 Board, based on this language concluded that there were feasible and desirable alternatives  
4 located away from the shorelands, which were estimated to be more costly than the proposal.  
5 The Douglas County language is more comparable to the Whatcom County provision at issue,  
6 than the Seattle Master Program provision reviewed in the Defense Fund case.  
7

## 8 XII

9 WCWD and SVCA have not sustained their burden of proving that there are no feasible  
10 alternatives to locating a new sewage interceptor line away from the shoreline of Lake  
11 Whatcom.

## 12 XIII

13 The Lake Louise route is technically feasible. It is located totally outside the shorelines  
14 of Lake Whatcom. It is estimated to be more expensive than the proposal, but there was no  
15 evidence presented that WCWD would, as a public entity, be unable to gather the revenues to  
16 pay for such a system.

## 17 XIV

18 We are not persuaded that the construction of the Lake Louise route would induce  
19 growth in that area. Growth is determined by local zoning. We are mindful, that as early as  
20 1982, the County Comprehensive Plan declared:

21 further residential development within the Lake Whatcom watershed must be limited to  
22 a quantity and density which is consistent with the overall maintenance of a safe and  
adequate public water supply

23 Ex. R-12, p. 1 (of ordinance). Thus, the question of how much growth will be allowed in the  
24 area is one for local officials to answer. Locating the new sewer interceptor outside the  
25 shorelines will channel consumptive uses away from a shoreline of state-wide significance. It  
26

1 will also prevent the introduction of significant additional sewage transmission into an area that  
2 directly abuts the major source of drinking water for Bellingham and its surroundings. That is  
3 consistent with the objectives of the WCSMP. The fact that the Lake Louise route will cross  
4 Austin Creek, a shoreline, and parallel Beaver Creek, which is not a shoreline under the SMA,  
5 is more than offset by the glaring fact that the WCWD proposal would place several miles of  
6 sewage transmission in direct proximity to the fragile public resource of Lake Whatcom. It is  
7 true that sewage transmission already occurs along Lake Whatcom. However, we do not  
8 subscribe to the notion that George Leigh Mallory's famous remark that he sought to climb  
9 Mount Everest because it "was there," can be transferred to a maxim that shoreline  
10 development is appropriate because it is there. Whatcom County and Ecology have chosen a  
11 policy which, in this instance, appears designed to reverse previous public utility decisions  
12 made along an important watershed. If that policy is now to be changed, it can only be done  
13 by adhering to the orderly procedures for amending master programs under the SMA.  
14

## 15 XV

16 The STEP system proposal, while commendable in its concept of providing some  
17 treatment of domestic sewage at the source, and in utilizing sewage collection and transmission  
18 systems efficiently, would not be consistent with the WCSMP, or the policies of the SMA.  
19 This is because it shares the disadvantage of the WCWD proposal, in allowing substantially  
20 more new sewage to be transmitted in the shorelines of Lake Whatcom. The cost of the STEP  
21 system, for collection, is higher, at \$3,500,000, than either the proposal, or the Lake Louise  
22 alternative. The cost to residential owners, estimated at \$3,000 per owner, is about three  
23 times the estimated cost of a residential owner constructing a lateral line to tie into the WCWD  
24 collection system. We do not, however, for the reasons expressed above, regard these cost  
25 comparisons as constituting a basis for declaring the STEP proposal as infeasible.  
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**XVI**

Rehabilitation of the leaking collection system at Sudden Valley is ongoing. Once accomplished, it will provide more capacity than currently exists in the system. However, we do not regard that as an alternative to the proposal, because the evidence established that, even successful rehabilitation and reduction of I and I will not achieve comparable capacity to that offered by the proposal. This is not to say that such rehabilitation is not important. It is. The Board takes judicial notice that it is general state policy to remove stormwater from sanitary sewage systems, based on the objective of eliminating raw sewage overflows to receiving waters, induced by excessive stormwater intrusion. Indeed, WCWD may be required by the terms of the agreement between Bellingham and WCWD to remove the I and I from the system. We must assume, based on the testimony, that regardless of what alternative is ultimately selected, that WCWD will proceed to reduce I and I to that which is technologically feasible.

**XVII**

The big basin concept would also be inconsistent with the WCSMP for the same reason; namely, the introduction of substantially more sewage transmission along the shoreline of Lake Whatcom.

**XVIII**

The do-nothing alternative would be technically feasible. But its reliance on septic tanks, would be inconsistent with the objective of protecting the Lake Whatcom reservoir. The relatively steep elevations above the lake which are available for such systems, should be a limiting factor to the future placement of such systems. We note that the Lake Whatcom Water Quality Protection Study, done by the URS Corporation in 1986, recommends, at p 45, requiring sewer hookup for all new development in the watershed.



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**XIX**

Any Finding of Fact deemed a Conclusion of Law is hereby adopted as such. From the foregoing, the Board issues this.

**ORDER**

The County's decision to deny WCWD's application for a shoreline substantial development permit, for the construction of a sanitary sewer transmission interceptor and related facilities, parallel to the existing sanitary sewer interceptor, from Sudden Valley, along the shore of Lake Whatcom to the Silver Beach trunk line, is affirmed.

DONE this 1st day of December, 1993.

**SHORELINES HEARINGS BOARD**

  
\_\_\_\_\_  
ROBERT V. JENSEN, Presiding Officer

  
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RICHARD C. KELLEY, Member

  
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BOBBI KREBS-MCMULLEN, Member

(See Dissenting Opinion)  
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BOB PATRICK, Member

(See Dissenting Opinion)  
\_\_\_\_\_  
DAVE WOLFENBARGER, Member

S92-41F

**SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON**

**SHB NO. 92-41  
DISSENT**

The Shoreline Hearings Board heard this matter on July 26-28, 1993. On October 25, 1993, Board members Robert V. Jensen, Richard C. Kelley and Bobbi Krebs-McMullen approved "Final Findings of Fact, Conditions of Law and Order" upholding Whatcom County's decision to deny Whatcom County Water District's application for a shoreline substantial development permit for the construction of a sanitary sewer transmission interceptor and related facilities parallel to the existing sanitary sewer interceptor, from Sudden Valley along the shore of Lake Whatcom to the Silver Beach trunk line.

The undersigned members of the Shorelines Hearings Board dissent from that decision.

- 1 The dominant issue in this matter is whether or not the appellant, Whatcom County Water District #10, satisfied the following provision of the Whatcom County Shoreline Master Program:

Sewage trunk lines, interceptors, pump stations, and treatment plants are not shoreline dependent and should be located away from shorelines unless alternatives are infeasible. (WCSMP, 6 19[2][B][1])

- 2 The burden of proof to demonstrate that alternatives are infeasible falls to the appellant.

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- 3 The record of this application before the Whatcom County Hearings Examiner and the Whatcom County Council is conclusive that at the local level the appellant failed to satisfy this burden of proof that alternatives to the second sewer line along Lake Whatcom Boulevard were infeasible. Whatcom County rightly denied the appellant's application
- 4 Matters before the Shorelines Hearings Board are de novo Whether the appellant had satisfied its burden of proof on the infeasibility of alternatives when before Whatcom County is immaterial to the Shoreline Hearings Board's decision in this matter
- 5 During the three days of testimony before the Board on July 26-28, 1993, the appellant presented detailed testimony and evidence that alternatives to the shoreline location of the sewer interceptor had been investigated. Specifically, the appellant's consulting engineering firm, Wilson Engineering, had studied in detail three alternatives. a route along Lake Louise Road, a S T E.P. system alternative, and a big basin alternative A do-nothing alternative was also explored.
- 6 The majority of the Board concluded that the S T.E P system alternative and the big basin alternative would be inconsistent with the WCSMP We agree The majority

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concluded that the do-nothing alternative (apparently relying on septic tanks) would be inconsistent with the objective of protecting the Lake Whatcom reservoir. We also agree with this conclusion

7 The majority also concluded that successful rehabilitation of the Sudden Valley sewage collection system, specifically a substantial reduction in Inflow and Infiltration (I & I) should not be regarded as an alternative to the proposal because it would not achieve comparable capacity to that offered by the proposal. We also agree with this conclusion.

8 This elimination of alternatives leaves only one to which to apply the "infeasible" criterion: The Lake Louise Road alternative. Thus the crux of the matter. Has the appellant satisfied its burden of proof and demonstrated that this alternative is infeasible. We answer in the affirmative.

9 The majority compares this case to the Douglas County case as an example. SHB Nos. 86-34, 86-36, and 86-39 (1988). However, the facts of the cases are extremely dissimilar. In Douglas County the issue was the proposed construction of a major highway along miles of pristine, undeveloped waterfront of the Columbia River, a fragile shoreline area that is in most respects still in its natural state. The proposed

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highway would have virtually denied public access to the shoreline and introduced significant adverse shoreline impacts.

- 10 The consideration of alternatives should realistically consider more than technical feasibility as the majority seems to imply. We do not disagree that the Lake Louise Road route is technically feasible: indeed, if technical feasibility is the sole criterion, we can envision a number of others that would qualify. We conclude, rather, that the evaluation of feasibility should consider the full range of environmental, social and economic impacts to the community. This was the approach taken not only in Defense Fund v Metro, 59 Wn App. 613, 800 P. 2d 387 (1990) but also in the Douglas County case, WEC v Douglas County, SHB No.'s 86-34 et al (1988)
- 11 The Lake Louise Road alternative fails the feasibility test in several important aspects. It does not give the advantage of the intertie with the parallel lines and the ability to reroute in the event of malfunction along its entire length. The possibility of environmental impacts resulting from this route are greater than from the existing route, due to its crossing of Austin Creek twice and its paralleling of Beaver Creek. This alternative is certainly considerably more expensive than the Lake Whatcom Boulevard route, yet there is no evidence of any environmental or social benefit to be derived from this increased expenditure.

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- 12 Any decision such as the one for this case necessarily requires the weighing of evidence and testimony presented by both sides. In this regard the expert technical testimony provided by appellant's witness, Margaret Curtis of Wilson Engineering, was convincing. Ms. Curtis provided detailed technical analysis of the various alternatives. On the other hand, the intervenor-respondents' witness, engineer Edmund McMillan, admitted he had spent no more than eight hours studying this issue and was not really familiar with the existing system. Under questioning, he admitted that a second parallel line could serve as a back-up to prevent overflows.
- 13 It is clear to us that the intervenor-respondents oppose the Lake Whatcom Boulevard route less over concern to the shoreline and more in opposition to growth in Sudden Valley. Witness Jay Tabor was refreshingly clear in his testimony that his major concern was increased traffic in his Whatcom Falls neighborhood that would result from increased growth in Sudden Valley.
- 14 It is also telling to us that the Whatcom County Deputy Prosecuting Attorney, in his closing brief, changed his position and agreed with that of the appellant. While certainly not conclusive or compelling, this change of position is indicative of the strength of the appellant's case.


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Based on the above conclusions, the undersigned dissent from the decision of the majority of the Board upholding the denial of this appeal

Done this 25<sup>th</sup> day of October, 1993

SHORELINE HEARINGS BOARD

  
Dave Wolfenbarger, Member

  
Robert L. Patrick, Member